

The Commonwealth of Massachusetts



MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

EXECUTIVE DEPARTMENT
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March 18, 2005.

To the Honorable Senate and House of Representatives:

Today I am filing for your consideration the attached legislation entitled "An Act Relative to Ocean Resources and Conservation".

This comprehensive legislation will help Massachusetts assert more control over its ocean territories and ensure that this natural resource is not harmed by unwanted and unregulated development. It will also facilitate more efficient project planning and streamline the regulatory and permitting process by clearly identifying areas that are either suitable or unsuitable for open water projects.

The centerpiece of this legislation is the mandate that environmental agencies and other stakeholders develop a plan for ocean use, so that Massachusetts' waters are protected and not exploited. This bill supports enhanced fisheries habitat protection and deters ocean use or development incompatible with commercial fishing. Both of these activities are crucial parts of a strong Massachusetts economy.

I respectfully request your prompt and favorable consideration of the legislation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. T. Romney", written over a horizontal line.

MITT ROMNEY,
Governor.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO OCEAN RESOURCES AND CONSERVATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. WHEREAS, advances in technology and limited
2 availability of suitable land has begun to place significant develop-
3 ment pressure on the ocean waters of Massachusetts;

4 WHEREAS, the traditional “first-come, first served” approach
5 to use of the commonwealth’s ocean resources threatens protection,
6 conservation and wise use of these ocean resources;

7 WHEREAS, the Massachusetts Ocean Management Task Force
8 has studied and made recommendations, based upon a public partic-
9 ipation process, for improved stewardship of the commonwealth’s
10 ocean resources;

11 WHEREAS, the United States Commission on Ocean Policy
12 and the Pew Commission have recently highlighted the need for
13 enhanced ocean management measures at both the state and federal
14 level;

15 WHEREAS, the stewardship of ocean resources should be car-
16 ried out in accordance with sound management practices that pro-
17 tect the public trust, value biodiversity, respect the interdependence
18 of ecosystems, foster sustainable uses that capitalize on economic
19 opportunity without significant detriment to the ecology or natural
20 beauty of the ocean, use best available information, and encourage
21 public participation in decision making; and,

22 WHEREAS, this act will implement recommendations of the
23 Massachusetts Ocean Management Task Force to enable planning
24 for stewardship of these ocean resources held in trust for the public.

25

26 SECTION 2. Chapter 21A is hereby amended by inserting after
section 4B the following section:—

1 Section 4C. The secretary of environmental affairs shall exercise
2 policy oversight and planning over the ocean planning area described

3 in section (a) below, on behalf of the people of the commonwealth
4 pursuant to the authority vested in the secretary by sections 1 through
5 6 of chapter 21A. Such policy oversight and planning shall be exer-
6 cised through the promulgation of an ocean use management plan,
7 hereafter referred to as an ocean plan, and defined as a document
8 setting forth, among other things, the commonwealth's goals, poli-
9 cies, standards, and other measures to govern use of the ocean area
10 described in section (a) below and held in trust for the benefit of the
11 public. Upon adoption, an ocean plan shall be formally incorporated
12 into the Massachusetts coastal zone management program as refer-
13 ended in section 4A of chapter 21A.

14 (a) The geographic area subject to an ocean plan, hereinafter
15 referred to as the ocean planning area, shall include any waters
16 and associated submerged lands of the ocean, including the seabed
17 and subsoil, lying between the mean low water mark and the sea-
18 ward boundary of the commonwealth. The ocean plan also may
19 address activities in adjacent marine waters and, to the maximum
20 extent consistent with federal law, may apply to activities occur-
21 ring in adjacent federal waters that are functionally connected to or
22 can reasonably be expected to affect the management of resources
23 within the ocean planning area. Development of an ocean plan may
24 be phased over time into geographically distinct regions and/or
25 independent subject matter as deemed appropriate by the secretary.

26 (b) The ocean plan shall guide and coordinate the administration
27 of all state programs governing offshore development, ocean pro-
28 tection and other ocean uses, except those uses not involving sig-
29 nificant alteration to ocean resources. In preparing the ocean plan,
30 the secretary shall take into account the existing natural, social, and
31 economic characteristics of the ocean planning area, together with
32 the interests of the commonwealth in protecting marine resources;
33 preserving and enhancing public access; enhancing biodiversity and
34 ecosystem health; addressing climate change and sea-level rise; and
35 fostering sustainable uses that capitalize on economic opportunity
36 and uses that support long term economic activity without signifi-
37 cant detriment to the ecology or natural beauty of the ocean. The
38 commissioners of the department of fish and game, the department
39 of environmental protection, the department of conservation and
40 recreation, and the department of agricultural resources, and the
41 director of the Massachusetts office of coastal zone management

42 shall serve as an ocean advisory board to the secretary of environ-
43 mental affairs in development of the ocean plan.

44 Upon adoption of an ocean plan, no construction in or other
45 significant alteration of the ocean planning area may occur, except
46 for fishing and other exempt activities as provided in section (h)
47 herein, unless such activities conform to all applicable provisions
48 of the ocean plan. All offices and departments of the executive
49 office of environmental affairs, and all other agencies, departments,
50 divisions, units, commissions, boards and authorities of the com-
51 monwealth shall enforce laws and regulations within their jurisdic-
52 tion, conduct regulatory reviews, administer programs, disburse
53 funds, perform or supervise construction activities, and otherwise
54 conduct their activities in a manner that ensures conformance with
55 the applicable provisions of an ocean plan as well as any provisions
56 of this act.

57 (c) The executive office of environmental affairs shall prepare
58 an ocean plan that includes, but is not limited to, the following ele-
59 ments:

60 (1) a baseline assessment that incorporates best available sci-
61 entific understanding of marine and ocean resources including
62 research, mapping, monitoring and other data, public and agency
63 input, and other relevant natural, social and economic planning
64 information;

65 (2) an outreach and participation program, which shall include
66 early and continuing interaction with the public, business sector,
67 other interested groups and municipal, state and federal officials,
68 an opportunity for notice of the contents, public comment and a
69 public meeting or meetings on the proposed ocean plan; and regular
70 consultation with the ocean advisory board, the energy facilities
71 siting board, the executive office of public safety, the Massachu-
72 setts highway department, the department of energy resources, the
73 department of telecommunications and energy, the Massachusetts
74 port authority and other state and federal agencies having jurisdic-
75 tion over resources or activities within or affecting the ocean plan-
76 ning area;

77 (3) identification of management measures, including but not
78 limited to, performance standards, mitigation requirements, or use
79 limitations, as may be applicable to specific geographic areas, to be
80 developed in a manner consistent with state statutes and regulations

81 that control or otherwise affect development or other ocean use in
82 the ocean planning area; such management measures also shall be
83 compatible, to the maximum extent possible, with all applicable
84 plans, programs, and projects for which the respective state agen-
85 cies are responsible;

86 (4) an implementation strategy that specifies the arrangements
87 that will ensure effective application of the identified management
88 measures within the planning area in question, and to ensure that
89 all offices of the executive office of environmental affairs, and all
90 other agencies, departments, divisions, units, commissions, boards
91 and authorities of the commonwealth shall conduct their activities
92 in a manner that is consistent with the applicable provisions of an
93 ocean plan as well as any provisions of this act; implementation
94 arrangements may include, as appropriate, memoranda of under-
95 standing or other instruments of agreement to ensure coordination
96 between the secretary and all relevant state agencies;

97 (5) an effective time period of the ocean plan not to exceed 5
98 years, the proposed date when it will be reevaluated and renewed,
99 and a procedure for amending the plan including, but not limited to,
100 opportunity for public comment and a public meeting or meetings;
101 provided, however, that an ocean plan shall remain in effect until a
102 new or amended ocean plan is adopted; and,

103 (6) such other elements as may be deemed appropriate by the
104 secretary of environmental affairs to serve the purposes of this act.

105 (d) The secretary of environmental affairs shall give notice and
106 provide interested parties with the opportunity to present data and
107 views in regard to the proposed ocean plan or any amendment
108 thereto in writing in accordance with the provisions of section 3
109 of chapter 30A. At the conclusion of such public process, which
110 shall include one or more public meetings, and after consideration
111 of public comments received during the public comment period,
112 the secretary of environmental affairs may adopt the ocean plan or
113 any amendments thereto, and notice thereof shall be published in
114 the next available edition of the Environmental Monitor and in the
115 Massachusetts Register.

116 (e) Upon receipt of a written request for reconsideration by a
117 municipality, any state agency or ten or more citizens of the com-
118 monwealth within 21 days of publication of the secretary's deci-
119 sion in the Massachusetts Register, the secretary of environmental

120 affairs may reconsider the decision to adopt an ocean plan or any
121 amendment thereto if a compelling basis for such reconsideration
122 is presented in the written request. Such request for reconsideration
123 must include a clear and concise statement of the specific objec-
124 tions as to why the secretary's decision does not fulfill the purposes
125 of this act and the relief sought, including specifically any changes
126 that are proposed for consideration. The secretary shall respond in
127 writing to such request within 30 days of the close of the request
128 period, and shall set forth the basis for such response including the
129 reasons for any modification of the decision. When the secretary's
130 decision on the request for reconsideration is final, notice thereof
131 shall be published in the next available edition of the Environ-
132 mental Monitor and in the Massachusetts Register.

133 (f) Judicial review of an ocean plan or any amendment thereto
134 shall be as provided in section 7 of chapter 30A. Any such action
135 must be commenced within 30 days of the publication in the Mas-
136 sachusetts Register of notice of the ocean plan or, if a request for
137 reconsideration is filed, within 30 days of publication of notice of
138 the secretary's decision on the request for reconsideration. No such
139 action may be commenced unless the matter complained of was
140 raised by that party in writing in the public comment period on the
141 ocean plan; provided, however, that a matter may be raised upon a
142 showing that it is material and that it was not reasonably possible
143 with due diligence to have raised it during the public comment
144 period.

145 (g) Notwithstanding any other provisions of this Act, the fol-
146 lowing structures, uses, and activities are prohibited in the ocean
147 planning area described in section (a):

148 (1) the construction or operation of offshore or floating elec-
149 tric generating stations, except for renewable energy facilities if
150 allowed by an ocean plan in an area not designated as the Cape Cod
151 ocean sanctuary by section 13 of chapter 132A; provided, however,
152 that in all ocean sanctuaries except the Cape Cod ocean sanctuary,
153 nothing in this act is intended to prohibit the construction or opera-
154 tion of industrial liquid coolant discharge and intake systems and
155 all other activities, uses and facilities associated with the genera-
156 tion, transmission, and distribution of electric power, provided that
157 all certificates, licenses, permits and approvals required by law are
158 obtained therefor;

159 (2) the dumping or discharge of commercial, municipal,
160 domestic, or industrial wastes in areas designated as an ocean
161 sanctuary by section 13 of chapter 132A, except as may be allowed
162 pursuant to sections 16 or 16A through 16F of chapter 132A and its
163 implementing regulations, as may be amended;

164 (3) the incineration of solid waste material or refuse on, or in
165 vessels moored or afloat;

166 (4) the removal of any sand, gravel or other minerals, gases or
167 oils, for extraction purposes except for the removal of sand and
168 gravel from the seabed and subsoil for the purposes of navigation,
169 shore protection or beach restoration, or for facilities and activities
170 undertaken or required by a public agency for purposes of dredging,
171 decontamination, response actions, capping, or disposal of polluted
172 aquatic sediments;

173 (5) commercial advertising; and

174 (6) any work other than that listed in section (g)(1)-(5) above
175 that requires authorization by license or permit pursuant to chapter
176 91 and its implementing regulations, unless such work:

177 i. is exempt from the requirements of this act pursuant to section
178 (h), herein;

179 ii. conforms to the applicable provisions of an ocean plan; or

180 iii. if an ocean plan is not in effect, complies with all applicable
181 provisions of sections 12A through 16F and section 18 of chapter
182 132A, as appearing in the 2002 Official Edition, and its imple-
183 menting regulations.

184 (h) The following activities are exempt from the requirements of
185 this act:

186 i. fishing, hunting, navigation aids, and any movement of vessels
187 for commerce, recreation or scientific exploration;

188 ii. beach nourishment, channel and shore protection structures,
189 and facilities for flood, water level or tidal control;

190 iii. infrastructure crossing facilities pursuant to chapter 91, pro-
191 vided no portion thereof is located outside of state waters or in an
192 ocean sanctuary as designated by section 13 of chapter 132A;

193 iv. facilities for molluscan bivalve shellfish propagation or
194 enhancement that do not extend seaward of municipal borders;

195 v. moorings, floats, and rafts held by bottom anchor, and ramps
196 attached thereto, if authorized by a municipality pursuant to section
197 10A of chapter 91;

198 vi. piers, wharves, or other filled or pile-supported structures
199 contiguous with the existing land mass above the high water mark;
200 vii. environmental restoration or mitigation activities required
201 by a certificate of the secretary of environmental affairs issued pur-
202 suant to sections 61 through 62H of chapter 30; and

203 viii. projects that have filed a chapter 91 license application and
204 received a determination of completeness from the department of
205 environmental protection prior to the date of enactment of this act,
206 provided, however, that such projects shall continue to be subject to
207 applicable provisions of sections 12A through 16F and section 18
208 of chapter 132A, as appearing in the 2002 Official Edition, and its
209 implementing regulations in effect on the filing date of the license
210 application.

211 (i) There shall be established and set up on the books of the com-
212 monwealth a separate fund to be administered by the executive
213 office of environmental affairs, in consultation with the department
214 of environmental protection, to be known as the Ocean Resources
215 Conservation and Waterways Fund. There shall be credited to such
216 fund any fees or other amounts of any type collected pursuant to
217 chapter 91; any compensation or mitigation for ocean development
218 to be used for the purposes of ocean resource enhancement or resto-
219 ration; any income derived from the investment of amounts credited
220 to said fund; and any appropriation, grant, gift of other contribution
221 explicitly made to such fund. Amounts credited to the fund shall
222 be used, without further appropriation, solely for the purposes of
223 the administration and implementation of the permitting, licensing,
224 compliance and enforcement of chapter 91 by the department of
225 environmental protection and for the purposes of policy oversight,
226 management planning, environmental enhancement, restoration and
227 coordination of ocean resources by the executive office of environ-
228 mental affairs pursuant to this act, including the costs of employee
229 or consultant services necessary to implement the requirements of
230 these laws.

231 (j) The secretary of environmental affairs may promulgate such
232 regulations as determined appropriate to implement, administer and
233 enforce this act.

234 (k) The attorney general, at the request of the executive office of
235 environmental affairs, may take such action as may be necessary
236 from time to time to enforce the provisions of this act, and the supe-
237 rior court shall have jurisdiction to enforce the provisions hereof.

238

239 SECTION 3. Sections 12A, 12C, 14 through 15 and 18 of chapter
240 132A are hereby repealed.

241

242 SECTION 4. Section 12B of chapter 132A of the General Laws,
243 as appearing in the 2002 Official Edition, is amended by striking
244 out the words “‘Act’, the Massachusetts Ocean Sanctuaries Act.” in
245 line 3.

1 SECTION 5. Section 12B of chapter 132A of the General Laws,
2 as appearing in the 2002 Official Edition, is further amended by
striking out, in lines 13-14 and 15, the words “environmental man-
1 agement” and inserting in place thereof the following:— environ-
2 mental protection.

3

4 SECTION 6. Section 16 of chapter 132A of the General Laws,
as appearing in the 2002 Official Edition, is further amended by
1 striking out the first paragraph.

2

3 SECTION 7. Section 16A of chapter 132A of the General
4 Laws, as appearing in the 2002 Official Edition, is amended by
5 striking out “section fifteen” in lines 1 and 7 and inserting in place
thereof:— section 4C of chapter 21A.

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